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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/530,512	04/06/2005	Charles Keller	1321.2.83.1	6728
21552	7590	07/02/2007		
MADSON & AUSTIN GATEWAY TOWER WEST SUITE 900 15 WEST SOUTH TEMPLE SALT LAKE CITY, UT 84101			EXAMINER WILDER, CYNTHIA B	
			ART UNIT 1637	PAPER NUMBER
			MAIL DATE 07/02/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	Application No. 10/530,512	Applicant(s) KELLER ET AL.	
	Examiner Cynthia B. Wilder, Ph.D.	Art Unit 1637	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 30 May 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1, 8, 9, 11, 12, 14, 15, 17, 18, 20, 21, 23 and 25-36 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1, 8-9, 11-12, 14, 15, 17-18, 20-21, 23, 25-36 are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### ***Sequence Election Requirement Applicant to All Groups***

1. The claims 1, 8-9, 11-12, 14-15, 17-18, 20-21, 23 and 25-36 reads on patentably distinct SEQ ID Numbers. Each sequence is patentably distinct because the sequences are structurally unrelated sequences, and a further restriction is applied to each Group. Applicant must further elect a single SEQ ID NO: from each of the following groups:

- (a) GSTM1 primer sequence = SEQ ID NOS: 1-5
- (b) GSTM3 and GSTT1 primer sequence = SEQ ID NOS: 9-12, 24-26
- (c) GSTP1 specific primer sequence = SEQ ID NOS: 13-23
- (d) Beta-actin primer sequence = SEQ ID NOS: 6-8
- (e) GSTT1\*0 primer sequence = SEQ ID NO: 33-34
- (f) GSTT1/GSTT2 primer sequence = SEQ ID NO: 31-32.

Applicant's election will result in a total of six sequence (6 SEQ ID NOS:).

Applicant must specifically identify each of the corresponding SEQ ID NO: X or SEQ ID NO: Y for the sequence elected along with the corresponding claims and primer sequence as outlined above.

#### ***MPEP 803.04 states:***

Nucleotide sequences encoding different proteins are structurally distinct chemical compounds and are unrelated to one another. The sequences are thus deemed to normally constitute independent and distinct inventions within the meaning of 35 U.S.C. 121. Absent evidence to the contrary, each such nucleotide sequence or amino acid sequence is presumed to represent an independent and distinct invention, subject to a restriction requirement pursuant to 35 U.S.C. 121 and 37 CFR 1.141 eq seq. By statute, "[i]f two or more independent and distinct inventions are claimed in one application, the Commissioner may require the application to be restricted to one of the invention". "35 U.S.C. 121." Pursuant to this statute, the rules provided that "[i]f two or more independent and distinct invention are claimed in a single application, the

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examiner in his action shall require the Applicant...to elect that invention to which his claim shall be restricted". 37 CFR 1.142(a). See also 37 CFR 1.141(a).

**Applicant is advised that examination will be restricted to only the elected SEQ ID NO: and should not to be construed as a species election.** Non-elected sequences in multiple sequence claims will be withdrawn from prosecution.

2. Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species or invention to be examined even though the requirement be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

The election of an invention may be made with or without traverse. To reserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse.

Should applicant traverse on the ground that the inventions are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the inventions or species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C.103(a) of the other invention.

3. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim

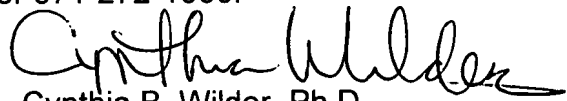
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remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cynthia B. Wilder, Ph.D. whose telephone number is (571) 272-0791. The examiner can normally be reached on a flexible schedule.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Benzion can be reached on (571) 272-0782. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Cynthia B. Wilder, Ph.D.  
Patent Examiner  
Art Unit 1637

6/23/2007